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8 **UNITED STATES DISTRICT COURT**  
9 **SOUTHERN DISTRICT OF CALIFORNIA**  
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11 UNITED STATES OF AMERICA,

12 Plaintiff,

13 vs.

14 JORGE BELTRAN SANCHEZ,

15 Defendant.

CASE NO. 07CR1319WQH  
CASE NO. 08CV1303WQH

ORDER

16 HAYES, Judge:

17 The matter before the Court is the Motion under 28 U.S.C. § 2255 to vacate, set aside,  
18 or correct sentence by a person in federal custody filed by Defendant. (Doc. # 133). Defendant  
19 moves the court to modify his sentence on the grounds that he is not able to reduce his sentence  
20 through a drug program based upon his deportation status. The Court finds that the issues  
21 raised in the petition are appropriate for summary disposition.

22 **APPLICABLE LAW**

23 28 U.S.C. §2255 provides that “A prisoner under sentence of a court established by Act  
24 of Congress claiming the right to be released upon the ground that the sentence was imposed  
25 in violation of the Constitution or laws of the United States, or that the court was without  
26 jurisdiction to impose such sentence, or that the sentence was in excess of the maximum  
27 authorized by law, or is otherwise subject to collateral attack, may move the court which  
28 imposed the sentence to vacate, set aside or correct the sentence.” A district court must

1 summarily dismiss a § 2255 application “[i]f it plainly appears from the motion, any attached  
2 exhibits, and the record of prior proceedings that the moving party is not entitled to relief.”  
3 Rule 4(b), Rules Governing Section 2255 Proceedings for the United States District courts.  
4 When this standard is satisfied, neither a hearing nor a response from the government is  
5 required. *See Marrow v. United States*, 772 F.2d 525, 526 (9th Cir. 1985).


### 6 **RULING OF THE COURT**

7 In this case, the record conclusively shows that the Defendant has waived his right to  
8 bring a § 2255 motion. In the plea agreement, the Defendant waived “to the full extent of the  
9 law, any right to appeal or to collaterally attack the conviction and sentence ... unless the Court  
10 imposes a custodial sentence above the greater of the high end of the guideline range  
11 recommended by the Government pursuant to this agreement at the time of sentencing.” (Doc.  
12 # 74 at page 9.) This waiver is clear, express and unequivocal. Plea agreements are  
13 contractual in nature, and their plain language will generally be enforced if the agreement is  
14 clear and unambiguous on its face. *United States v. Jeronimo*, 298 F.3d 1149, 1153 (9th Cir.  
15 2005). The Government recommended a sentence of 51 months which was the low end of the  
16 applicable guideline range of 51 - 63 months as provided in the plea agreement. (Doc. # 74  
17 at 8). The Court imposed a sentence of 45 months. (Doc. # 130). Pursuant to the terms of the  
18 plea agreement, the Defendant waived his right to collaterally attack the sentence imposed.

19 Finally, the Defendant presents no grounds for relief under Section 2255. The  
20 Sentencing Reform Act gives the Bureau of Prisons the responsibility to “designate the place  
21 of the prisoner’s imprisonment.” 18 U.S.C. § 3621(b). *See United States v. Cubillos*, 91 F.3d  
22 1342, 1344-45 (9th Cir. 1996). The Court of Appeals for the Ninth Circuit has rejected the  
23 assertion that an alien’s equal protection rights are violated when he cannot be housed in a  
24 minimum security facility or a community correction center based upon his deportation status.  
25 *See McClean v. Crabtree*, 173 F.3d 1176, 1185-86 (9th Cir. 1999).

1 IT IS HEREBY ORDERED that the Motion under 28 U.S.C. § 2255 to vacate, set  
2 aside, or correct sentence by a person in federal custody filed by Defendant is denied.

3 DATED: October 27, 2008

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5 **WILLIAM Q. HAYES**  
6 United States District Judge  
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